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IN THE

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Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1061

WINDWARD SHIPPING (LONDON) LIMITED, et al.,
Petitioners,

versus

AMERICAN RADIO ASSOCIATION, AFL-CIO, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF CIVIL APPEALS, FOURTEENTH SUPREME
JUDICIAL DISTRICT OF TEXAS

Brief On Behalf Of The
Mobile Steamship Association
As Amicus Curiae

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**AMERICAN RADIO ASSOCIATION, AFL-CIO, et al.,
Respondents.**

**On Petition For A Writ of Certiorari
To The Court Of Civil Appeals,
Fourteenth Supreme Judicial District of Texas**

**BRIEF ON BEHALF OF
THE MOBILE STEAMSHIP ASSOCIATION
AS AMICUS CURIAE**

To The Honorable Judges of Said Court:

CONSENT OF PARTIES

All of the parties in this case have given their written consent to the filing of this brief and such written consents have been filed with the Clerk.

STATEMENT OF INTEREST

The Mobile Steamship Association is a non-profit corporation composed of members who are in the shipping business in the Port of Mobile. Its membership includes stevedoring companies, steamship agents, and steamship companies who do business at the Port of Mobile and includes substantially all of the different types of private employers who furnish shore-based employees and shore-based equipment to perform various services for shipowners while their vessels are in port.

The Mobile Steamship Association is interested in the outcome of this litigation because of the direct economic loss to its members caused by picketing of the type involved in this lawsuit.

Additionally, it is interested because it is a party to litigation that may be before this Court for review. On May 3, 1973, the Supreme Court of Alabama issued an opinion in the case of *American Radio Association v. Mobile Steamship Association, Inc.*, ____ Ala. ____, ____ So.2d ____ 83 LRRM 2567 (May 3, 1973).¹ The unions-appellants' petition for rehearing was denied on July 5, 1973. We expect that by the time this brief is considered by the Court the unions will have filed a petition for writ of certiorari in that case, which involves an identical issue to that presented here.

¹The opinion of the Supreme Court of Alabama, not yet officially reported, is reprinted as an Appendix to the Supplemental Brief of Petitioners.

ARGUMENT

As conceded in the Respondents' Brief in Opposition in this case, the picketing in question at the Port of Houston was part of a larger campaign by the six maritime unions who represent virtually all seamen on American flag vessels. Picketing under the same design took place at several of this Country's major ports.² It was the economic loss resulting from this picketing that prompted the Mobile Steamship Association ("Mobile") to seek relief in the Alabama State Courts. It is the comprehension of the consequences if the Labor Management Relations Act were construed to give Respondents the protected right to utilize this sort of picketing to bar foreign ships from the Port of Mobile and from other United States ports that causes Mobile to file this brief.

The nature of the license sought by the Respondents can best be demonstrated by an examination of testimony presented in the Alabama trial court. In that regard, key parts of the testimony of Louis "Blackie" Neira, the Seafarers International Union's port agent in Mobile, were quoted verbatim by the Alabama Supreme Court in its opinion in *American Radio Association v. Mobile Steamship Association, Inc.*, Appendix to the Supplemental Brief of Petitioners at A18-A19, as follows:

²Language on the picket signs and leaflets used in Mobile was identical to that used by the pickets in the case at bar.

[Cross examination by Mr. McRight]

"Q. What percentage of the vessels that call here at the Port [of Mobile] are of foreign flags?

"A. I would say about 70 to 80 percent.

"Q. Yes, sir. And it's your instructions from your International Headquarters to picket 70 or 80 percent of the vessels that call at the Port of Mobile?

"A. Within my resources, yes, to picket every one.

"Q. Allright, sir. And you would assume, as a man knowledgeable in the field of labor picketing that good labor men and good Union men would not cross those picket lines?

"A. We were hoping that they wouldn't do that.

"Q. Yes, sir. And this hope has been fulfilled in the Port of Mobile as far as longshoremen are concerned, isn't that true?

"A. Well, to a point, yes.

"Q. Now, would it not be then a fair conclusion to say that you had hoped and do hope that you will be able to prevent 70 or 80 percent of the vessels in the Port of Mobile from loading or from unloading cargo?

"A. My hope is to clutter up the Port of Mobile with foreign flags — Liberian, Panamanian ships — to bring sufficient pressure on the United States Government to do something about the American merchant marine.

"Q. That's your intention?

"A. Yes, sir.

"Q. That's your purpose?

"A. Yes, sir. (Emphasis supplied by the court)

* * * *

"Q. All right, sir. But you realize that your picketing is keeping members of the Mobile Steamship Association from loading and unloading these vessels that you are picketing, do you not?

"A. That is not the purpose of our picket line.

"Q. No, sir, I didn't ask you the purpose. You realize today that your picketing is preventing members of the Association from loading and unloading these vessels that you are picketing?

"A. *I hope that my picket line will shut the whole State Docks down and let everybody go home for a while. I hope I can do that. Not just the Mobile Steamship Association.*" (Emphasis supplied by the court)

Mr. Neira's admission that it was Respondents' goal to close the Port of Mobile to foreign flags, is truly frightening, especially when considered in terms of the Maritime Unions' power to achieve this objective absent judicial intervention. In the maritime industry whether in Mobile or elsewhere, one union's pickets — or as in this case, the pickets of several cooperating unions — can effectively shut down an entire port. The

events in the Port of Mobile are an excellent example of the devastating effect a picket line can have on a port and the ease with which Respondents' can achieve their intention of closing a port to foreign ships.

Picketing by the Respondents began in Mobile shortly after noon on November 3, 1971. At that time, farmers in the southern United States were harvesting their soybean crop, much of which was to be exported for sale overseas. An estimated 13,000,000 bushels of soybeans, valued in excess of \$50,000,000, was in the fields of this state and in the elevators at the Alabama State Docks, waiting to be shipped through the Port of Mobile. Soybeans must be harvested when ripe, otherwise they will be lost. The elevators at the Alabama State Docks and other storage facilities can accommodate only a small amount of the annual crop so there must be a continuous flow through the dock facilities into ships for carriage.

Respondents' pickets brought an immediate halt to the loading and discharging of ships at the Port. As expected, longshoremen refused to cross Respondents' picket lines to load or discharge vessels. Thus, millions of bushels of soybeans were in danger of being lost through spoilage.

Additionally, member companies of the Mobile Steamship Association were losing in excess of \$15,000.00 per day in fixed overhead costs while the picketing continued. Vessel demurrage costs ranging from \$2,000.00 to \$5,000.00 per day per vessel were forfeited. Ocean freight revenues were lost at the rate of \$35,000.00 per vessel per day.

Other facets of the Mobile economy were affected by the picketing in the Port. It has been estimated that the Mobile economy loses in excess of \$3,300,000.00 per week from a work stoppage in the Port. Thus, the work stoppage caused by Respondents had an immediate, significant impact on the economy of Mobile and its neighboring communities. Other forms of transportation, such as rail, barge and truck lines, which would have normally been busy moving cargo in and out of the Port were idled with resultant losses. Manufacturers dependent upon raw materials flowing through the Port were slowed in their production.

In addition to the dock workers who did not cross the picket lines, a large number of other employees directly connected with the industry had to be furloughed or laid off because of lack of work due to the picketing. The docks facilities of the State of Alabama which consisted of all of the public wharves in the Port of Mobile valued in excess of \$50,000,000.00, were largely idled by the picketing.

The effect of Respondents' picketing in the Port of Mobile, if it had been allowed to continue, would have been disastrous in terms of the economic interests of Mobile and the area's farmers, which stood to lose incalculable sums of money and business because of Respondents' ability to close the Port with its pickets.

It is no exaggeration to say that if such picketing by Respondents is deemed to be protected under the National Labor Relations Act, then these unions would have a license to close all United States ports to foreign

flag shipping. Had such occurred in 1971, perishable agricultural exports such as the soybeans waiting in the Port of Mobile would have been lost, and the inward flow of imports of vital raw materials, such as petroleum and ores, would have been halted. Any halt in agricultural exports would have detrimentally affected our nation's balance of payments.

It is apparent that Congress, in enacting the Labor-Management Relations Act, envisioned that it would mitigate burdens to the free flow of commerce if American unions were given rights and powers which would enable them to represent their employees effectively in their relationships with employers. (See 29 U.S.C. Section 151). We submit, however, that nothing in that Act suggests that Congress intended to give American unions a protected right to impose boycotts on foreign ships, with whom they have no collective bargaining relationship and whose labor relations are not governed by American law, because the crew's wages on such ships are lower than those on American ships. We submit that the observation of this court in *Benz*³ that for the labor Act to be applicable in this "delicate field of international relations there must be present the affirmative intent of Congress, clearly expressed" is very pertinent to the case at bar.

The decisions of this Court in *Benz*, *Ingres*,⁴ and *McCulloch*,⁵ premised on the fact that "[t]he (National

³*Benz v. Compania Naviera Hidalgo*, 353 U. S. 138 (1957).

⁴*Ingres Steamship Company v. Int'l Maritime Workers Union*, 372 U.S. 24 (1963).

⁵*McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 (1963).

Labor Relations) Act is concerned with industrial strife between American employers and employees"⁶ compelled the conclusion that the National Labor Relations Board had no jurisdiction because the Labor-Management Relations Act does not apply to disputes which relate, as in the case at bar and the Alabama case, to the internal affairs of foreign ships, i.e. the wage levels of the crews.

*Ariadne*⁷ does not, as Respondents contend, weaken our basis for reliance on *Incres*, *Benz* and *McCulloch* under the facts here. If anything, *Ariadne* strengthens it. Although *Ariadne* is authority for the proposition that peaceful picketing protesting substandard wages of American longshoremen employed on a casual or occasional basis to load or unload a foreign ship is governed by the Labor Act because "[t]he American longshoremen's short-term, irregular and casual connection with the respective vessels plainly belied any involvement with the ships' 'internal discipline and order' "⁸, it is evident from the decision that the opposite must be true if the picketing is directed to the wages paid the foreign crew who are full time employees on the ship.

Respondents' picketing at Mobile temporarily closed the Port but, fortunately, the severe economic consequences facing farmers, shippers, manufacturers and the community as a whole, was averted when

⁶*Benz*, 353 U.S. at 143, 144.

⁷*International Longshoremen's Association v. Ariadne Shipping Company*, 397 U.S. 195 (1970).

⁸397 U.S. at 200.

the State court examined the purpose of the picketing, concluded it was improper* and enjoined its continuation. We urge the Court to reject the Respondents' claim in the case at bar that State courts are pre-empted from adjudicating such cases.

Respectfully submitted,

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*The Alabama Supreme Court concluded:

"If a purpose or an objective of the picketing was to crowd the Port of Mobile with foreign ships calling there to load and unload cargo, in order to bring pressure on the federal government to do something about the American merchants marine, or, if the picketing was being carried on with the hope or expectation or desire to shut down the whole State Docks, not just the appellant [sic] Mobile Steamship Company, so no one could work, then we think a substantial question would arise as to whether or not another intended purpose of the picketing was interference with appellee's business, which was the loading and unloading of ships." *American Radio Ass'n v. Mobile Steamship Association, Inc.*, Appendix to the Supplemental Brief of Petitioners at A20-A21.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Brief have been served on counsel for all parties herein by depositing the same in a United States mail box with first class postage prepaid, addressed to counsel of record at the following post office addresses on the ____ day of August, 1973:

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